

FORM FOR USE IN APPLICATIONS

FOR HABEAS CORPUS UNDER 28 U.S.C. § 2254

RECEIVED

2005 OCT 13 A 9:26

JAMES ROBINSON

Name

121865

Prison Number

BZBB COR. FAC.

Place of Confinement

United States District Court MIDDLE

District of ALABAMA

Case.No. 1:05CV980-T

(To be supplied by Clerk of U. S. District Court)

JAMES ROBINSON

(Full Name) (Include name under which you were convicted) , PETITIONER

WARDEN CHERYL PRICE

(Name of Warden, Superintendent, Jailor, or authorized person having custody of Petitioner) , RESPONDENT

and

THE ATTORNEY GENERAL OF THE STATE OF

ROY KING

, ADDITIONAL RESPONDENT.

(if petitioner is attacking a judgement which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN
STATE CUSTODY

INSTRUCTIONS--READ CAREFULLY

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

The Judicial Conference of the United States has adopted, effective 1/1/83, the 8½ x 11 inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings, etc. filed after 12/31/82 must be on 8½ x 11 inch paper, otherwise we cannot accept them.

- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies * must be mailed to the Clerk of the United States District Court whose address is:

P.O. Box 711
Montgomery, Alabama 36101

- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

***If you are proceeding in forma pauperis, only the original petition needs to be filed with the Court.**

PETITION

1. Name and location of court which entered the judgment of conviction under attack HOUSTON COUNTY, ALABAMA
2. Date of judgment of conviction July 8, 1988
3. Length of sentence 25 Sentencing Judge MICHAEL CRESPI

4. Nature of offense or offenses for which you were convicted: BURGLARY
3RD DEGREE

5. What was your plea? (check one)

(a) Not guilty ☒

(b) Guilty ☐

(c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____

6. Kind of trial: (Check one)

(a) Jury ☒

(b) Judge only ☐

7. Did you testify at the trial? Yes ☒ No ☐

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court ALABAMA CRIMINAL COURT APPEAL

(b) Result AFFIRMED

(c) Date of result UNKNOWN AT THIS TIME

If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details: _____

ALABAMA SUPREME COURT

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

11. If your answer to 10 was "yes", give the following information:

(a) (1) Name of court HOUSTON CIRCUIT COURT

(2) Nature of proceeding RULE 32 PETITION

(3) Grounds raised INEFFECTIVE ASSISTANCE OF COUNSEL

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☒ No ☐

(5) Result DENIED

(6) Date of result UNKNOWN AT THIS TIME

(b) As to any second petition, application or motion give the same information:

(1) Name of court Rule 32 - Houston Circuit

(2) Nature of proceeding Rule 32

(3) Grounds raised THE COURT WAS WITHOUT JURISDICTION TO IMPOSE 25 YEARS FOR A CLASS C FELONY OFFENSE WHERE THE MAXIMUM IS ONLY TEN YEARS. THE JUDGE DIDN'T PLACE IN THE RECORDS ANY PRIORS 13A-5-9 IT MUST BE SHOWN. THE STATE NEVER PLACED THE PRIORS IN THE RECORD.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (X)

(5) Result Denied - Dismissed

(6) Date of result OCTOBER 11, 2004

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (X)

(5) Result _____

(6) Date of result _____

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:

(1) First petition, etc. Yes (X) No ()

(2) Second petition, etc. Yes (X) No ()

(3) Third petition, etc. Yes () No ()

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: _____

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

- A. Ground one: CONSTITUTIONAL VIOLATIONS 4TH, 5TH, 6TH, AND 14TH AMENDMENT 13A-5-9 PLAIN LANGUAGE
Supporting FACTS (tell your story briefly without citing cases or law):
ROBINSON WAS ILLEGALLY SENTENCED TO 25 YEARS. AKA.
Code 1975 SECTION 13A-5-9(C)(1)(2)(3) "IN ALL CASES WHEN IT IS SHOWN..." THE STATE DIDN'T PLACE, NOR INTRODUCE;
PROVIDED TO THE JUDGE ANY PRIORS. THE JUDGE MERELY SAID 25 YEARS FOR BURGLARY THIRD.
ROBINSON CHALLENGE THE CONSTITUTIONAL VIOLATIONS IN STATE COURT BY POST CONVICTION RELIEF, AFTER THE FINAL RULING ENTERED IN AIRBY V. STATE BROUGHT NEW CONSTITUTIONAL APPLICATION UNDER SENTENCING.
13A-5-9 IS MANDATORY LANGUAGE; IT MUST BE SHOWN THE JUDGE COULD NOT SHOW ANY PRIORS, BECAUSE NONE WERE USED AND PLACED IN THE RECORD. WHEN THE PRIORS ARE NOT SHOWN THE COURT IS WITHOUT SUBJECT MATTER JURISDICTION. SEE ATTACHED

- B. Ground two: CONSTITUTIONAL VIOLATION 4TH, 5TH, 6TH, AND 14TH AMENDMENT 13A-5-11
- Supporting FACTS (tell your story briefly without citing cases or law): ROBINSON HAS BEEN FINE 20,000.00 BY UNCONSTITUTIONAL ACTS. 13A-5-11 'A SENTENCE TO PAY A FINE FOR A FELONY SHALL BE FOR A DEFINITE AMOUNT, FIXED BY THE COURT, WITHIN THE FOLLOWING LIMITATIONS. ROBINSON'S CONVICTION COMES UNDER A CLASS 'C' FELONY THE MAXIMUM FOR A CLASS 'C' IS ONLY 5,000.00 13A-5-11 DOES NOT HAVE ANY PROVISIONS FOR ENHANCEMENT IF 13A-5-11 PROVIDES CLASS A APPLICATION, THEN ALL INMATES SENTENCE TO 15 YEARS UNDER A CLASS C FELONY ARE PROHIBITED FROM GET GOOD TIME. ROBINSON'S CONSTITUTIONAL RIGHTS UNDER PLAIN LANGUAGE HAS BEEN VIOLATED.

- C. Ground three: _____

Supporting FACTS (tell your story briefly without citing cases or law):

D. Ground four: _____

Supporting FACTS (tell your story briefly without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal state briefly what grounds were not so presented, and give your reasons for not presenting them: These
Grounds were not fully available ALABAMA
Amend 13A-5-9.1 AND Began Full Application
of How LEGISLATIVE INTENT APPLIED IN FACT
Federal Middle DISTRICT Provides CONSTITUTIONAL
Issues ARE Cognizable When State Court
Refuse To Address The Merits. ALABAMA LAW
UNDER HFOA HAS CHANGED AND The Serious CONSTI-
TUTIONAL VIOLATIONS NOW DISCOVERED ARE
SUBJECT MATTER JURISDICTION AND ALABAMA
STATE AN Illegal Sentence CAN Be CHALLENGE
AT ANY Time.
14. Do you have any petition or appeal now pending in any court, wither state or federal, as to the judgment under attack? Yes () No ()
15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
- (a) At preliminary hearing _____
- (b) At arraignment and plea _____
- (c) At trial BREAN DOWLING
- (d) At sentencing BREAN DOWLING
- (e) On appeal JONES

**GROUND I. ALABAMA CODE 1975 SECTION 13A-5-9
HAS BEEN VIOLATED BY STATE OF ALABAMA**

1. 13A-5-9(a) "**In all cases when it is shown...**" Alabama by Statute's plain language mandates that before any person can be sentenced under the HFOA Act it must be shown. The State of Alabama has violated protected Constitutional rights by not following the mandatory requirements as written for sentencing inmates, and this Plaintiff/Petitioner under Laws of the State of Alabama, and the Federal Constitution
2. The language, "**When it is shown**" that a convicted defendant has been previously convicted. Then the words as written mean that, it must be placed in Court's records, apprise the Court in an evidentiary admissible manner. This has been held to mean that Alabama must after July 23, 1987 where the Legislature approved the proper methods for enhancement under the HFOA, there were certified copies that must be given to the trial Court, case action summary sheets, docket sheets, and these must be presented to the Court and placed in the Courts records. Alabama can't sentence based on hearsay, memory, nor mere words for any sentence enhancement by 13A-5-9(a). It must be shown. The State has violated Plaintiff/Petitioners rights altogether, and all others housed where the records were not shown and given to the Court as required by Statute.
3. 13A-5-9(a) under use by Alabama, Defendants/Respondents have violated Constitutional rights under 13A-510.1 evidence of prior convictions submitted must meet Alabama attestation requirements at sentencing. The State of Alabama has violated Constitutional rights and sentenced illegally by evil intent, and in Violation of the Constitution of these United States under the 1st, 4th, 6th, and 14th Amendments, by Alabama plain and precise language sated in 13A-5-9(a).

Page 2.

13A-5-10.1 required actual proof that must be presented and placed before the trial Court, and given to the Court placing the same in the records for sentencing. Respondents have failed to adhere and follow the Constitution of these United States and the Constitution of the State of Alabama with the use of 13A-5-9(a) making it fully unconstitutional against Petitioner/Plaintiff in all aspects of sentencing, and punishment imposed.

4. Petitioner further shows that in 1988 the Legislature transferred the provisions of the Controlled Substance Act to Title 13A, 1987 Ala. Acts No. 87-603 Section 11. which became effective on September 30, 1988. Petitioner's sentence and conviction for 3rd degree burglary took place June 8, 1988. Drug Offenses could not be used for sentence enhancement under the HFOA, nor could it be used to knowingly violate Petitioner's Constitutional rights, by use of selective application under drug related crimes. In that Drug convictions were not applicable under any circumstances to be used where they were not included until September 30, 1988.

Facts Which Grant Relief

1. The Middle District Under 2254 has this cause before the Court pursuant to Alabama Subject Matter Jurisdiction, which comes under Post Conviction Relief. Alabama by plain language has denied to review the Constitutional Claims which Petitioner raise and grants

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relief as a matter of law. Plaintiff's full rights to have Federal Court take jurisdiction is invoke by Alabama Post Conviction Remedy under Law. The 4th Amendment creates a clear Liberty Interest for Plaintiff. The plain mandatory language says it must be shown. Where the priors are not shown, and placed in the records Alabama by sentencing imposes an illegal sentence.

Robinson's sentence for 25 Years for a Class C felony offense is in direct violation of the Constitutional rights. Alabama by all plain language states that the maximum for a Class C Felony is only 10 Years. Alabama says and illegal sentence is a jurisdictional issue which may be raised at any time which Robinson did. State of Alabama has directly failed to adhere to the Statute of Law as written under precise plian language. And was denied Constitutional review by Alabama Supreme Court, and Alabama Criminal Court of Appeals.

Respectfully Submitted

James Robinson

8/17/05

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes () No (X)

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes (X) No ()

(a) If so, give name and location of court which imposed sentence to be served in the future: HENRY COUNTY

(b) And give date and length of sentence to be served in the future: 25
YEAR TERM

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes (X) No ()

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on 8-17-05
(date)

James Hobbs
Signature of Petitioner